



Winston H. Hickox
*Secretary for
Environmental
Protection*

California Regional Water Quality Control Board

Santa Ana Region

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288



Gray Davis
Governor

February 18, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Brian Geis
Brookfield Homes Southland, Inc.
3090 Bristol Street, Suite 200
Costa Mesa, CA 92626

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2004-0022

Dear Mr. Geis:

We are enclosing a certified copy of Complaint No. R8-2004-0022 proposing administrative civil liability of \$50,000 for violations of the State's General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ, NPDES No. CAS000002, WDID No. 8 30S316718. If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on March 12, 2004. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check for \$50,000. The check should be made payable to the State Water Resources Control Board and should be mailed to Sacramento in the enclosed preprinted envelope, with the bottom portion of the enclosed invoice and the waiver form.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to February 24, 2004. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violation;
2. Your ability to pay the proposed assessment;
3. Any prior history of violations;

California Environmental Protection Agency

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:

Brookfield Homes Southland, Inc.)
3090 Bristol Street, Suite 200)
Costa Mesa, CA 92626)
Attn: Mr. Brian Geis)

Complaint No. R8-2004-0022
for
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Brookfield Homes is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on March 12, 2004 at the Orange County Sanitation District facility in Fountain Valley.
3. Brookfield Homes or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
4. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
5. Brookfield Homes Southland, Inc. is the developer/owner of the Amerige Heights construction site, located on the southeast corner of North Gilbert Street and Pioneer Avenue in the City of Fullerton. The storm water runoff from the Amerige Heights construction site (site) is regulated under the State's General Permit for Storm Water Runoff Associated with Construction Activities, Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit), WDID No. 8 30S316718.
6. Brookfield Homes is alleged to have violated Provisions C.2 ("All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan.") and C.4 ("All dischargers shall develop and implement a monitoring program and reporting plan in accordance with Section B: Monitoring Program and Reporting Requirements."). In turn, Section B.3 of the Monitoring and Reporting Requirements requires that "Qualified personnel shall conduct inspections of the construction site prior to anticipated storm events, during extended storm events, and

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after actual storm events...[p]re-storm inspections are to ensure that BMPs are properly installed and maintained; post-storm inspections are to assure that the BMPs have functioned adequately."). As more fully set forth below, Brookfield Homes failed to develop and implement an effective combination of erosion and sediment control Best Management Practices (BMPs) for the elimination or reduction of pollutants. As a result of inadequate, poorly maintained and absent BMPs, Brookfield Homes allowed the migration of sediment, construction debris and trash to the local storm drain system. Finally, Brookfield Homes failed to perform appropriate monitoring of BMPs before and during a predicted rain event, resulting in the discharge of sediment-laden storm water. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.

7. This complaint is based on the following facts:

- a) According to the Site's Notice of Intent submitted by Brookfield Homes, construction commenced on October 1, 2001 on the 21-acre site and was projected to be completed in December 2003;
- b) On October 2, 2003, Board staff (staff) conducted a joint inspection of the subject site with inspectors from the City of Fullerton. City of Fullerton staff had requested this joint inspection based on Brookfield Homes' lack of response to repeated efforts by City staff to bring the site into compliance with State and City requirements. During this inspection, staff observed that the BMPs implemented at the site were ineffective due to damage or deterioration. All six catch basin inlets at the site lacked adequate protection to reduce the discharge of sediment or other pollutants to the local storm drain system. Evidence of previous unauthorized non-storm water discharges was noted at several of these unprotected catch basin inlets. Large amounts of sediment and construction debris were stored directly on top of catch basin inlets and damaged sand bags resulted in the discharge of sediment, trash and construction debris, directly into the local storm drain system. Staff informed the site superintendent that the site was in violation of the General Permit and that an effective combination of sediment and erosion controls (as identified in the site SWPPP) needed to be implemented immediately and be well maintained, housekeeping practices needed major improvement and that all necessary training and inspections needed to be performed.
- c) On October 6, 2003, staff and City inspectors performed a follow-up inspection. During this inspection, staff observed that there had been some minor improvements in BMPs at the site. However, an effective combination of erosion and sediment control BMPs had still not been implemented and the site was still in violation of the General Permit. At this time, City inspectors issued a stop work notice for the site. Again, staff spoke with the site superintendent, instructing him to implement all aspects of the SWPPP. A Notice of Violation describing these violations was issued on October 22, 2003.

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- d) On November 13, 2003, the day after an anticipated, moderate storm event, staff conducted an inspection of the site. During this inspection, staff observed that there were still no effective BMPs implemented to prevent sediments and other pollutants from entering the storm drain system. Mounds of sediment were stored next to unprotected inlets. Trash and construction debris were scattered around the site. Site conditions demonstrated that qualified personnel had not conducted a pre-storm inspection on November 12, 2003, to ensure that BMPs were properly installed and maintained and had not conducted a post-storm inspection on November 13, 2003, to determine the effectiveness of BMP performance and perform needed BMP maintenance. Staff again spoke with the site superintendent regarding the importance of implementing adequate BMPs and conducting the required pre-storm and post-storm inspections that were listed in the site SWPPP. A second Notice of Violation was issued on December 3, 2003.
8. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each violation that occurs each day. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.
 9. Pursuant to Section 13385(c), Brookfield Homes is civilly liable for six violation days at \$10,000 per violation per day for a maximum assessment of \$60,000. This is based on violations of General Permit Provision C.2 on October 2 and 6, 2003 (\$10,000 each day for one permit violation each day) and Provisions C.2 and C.4 on November 12 and 13, 2003 (\$20,000 each day for two permit violations each day) .
 10. Board staff spent a total of 83 hours investigating this incident and conducting follow-up actions (@ \$70 per hour, the total cost for staff time is \$5,810). Brookfield Homes saved approximately \$10,000 by not implementing and maintaining an effective combination of erosion and sediment controls at this hillside construction site. These factors were considered in assessing the penalty indicated in Paragraph 11, below.
 11. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table below.

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Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	The discharger failed to implement an effective combination of sediment/erosion controls during construction in violation of the General Permit, in spite of repeated notices by staff to do so. Further, the discharger failed to conduct pre- and post-storm inspections of BMPs to insure that they were properly installed and maintained.
B. Culpability	The discharger is entirely culpable for the violations.
C. Economic Benefit or Savings	Brookfield Homes saved approximately \$10,000 by not implementing and maintaining adequate BMPs as described in the site SWPPP.
D. Prior History of Violations	Brookfield Homes has been issued two previous administrative civil liability complaints for other sites for similar violations, as well as having several Notices of Violation issued for poor SWPPP preparation and BMP implementation.
E. Staff Costs	Regional Board staff spent approximately 83 hours investigating this incident (@\$70 per hour, the total cost for staff time is \$5,810).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

After consideration of these factors and additional information provided by the discharger, the Executive Officer proposes that civil liability be imposed on Brookfield Homes in the amount of \$50,000 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check or money order payable to the State Water Resources Control Board for the amount of civil liability proposed under Paragraph 11, above, to Sacramento in the enclosed preprinted envelope.

If you have any questions, please contact Aaron Buck at (909) 782-4469 or Mark Smythe at (909) 782-4998. For legal questions, contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

2-18-04
Date


Gerard J. Thibeault
Executive Officer

In the matter of:)
)
 Brookfield Homes Southland, Inc.)
 3090 Bristol Street, Suite 200)
 Costa Mesa, CA 92626)
)
 Attn: Mr. Brian Geis)

Complaint No. R8-2004-0022
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of Brookfield Homes Southland, Inc. to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2004-0022. I have enclosed the bottom of the invoice and a check, made payable to the State Water Resources Control Board, in the amount of \$50,000. I understand that I am giving up right of Brookfield Homes to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Brookfield Homes Southland, Inc.



Terry Tamminen
Secretary for
Environmental
Protection

State Water Resources Control Board

*The energy challenge facing California is real.
Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at <http://www.swrcb.ca.gov>*



**Arnold
Schwarzenegger**
Governor

To:

BROOKFIELD HOMES SOUTHLAND
3090 BRISTOL STREET, SUITE 200
COSTA MESA, CA 92626
ATTN: BRIAN GEIS

Invoice No: 44721
Invoice Date: 02/18/2004
Enforcement Action ID: 83146
Enforcement Order No: R8-2004-0022

INVOICE

ACLCOMP

Milestone ID	Description	Amount	Due Date
54716	LIABILITY AMOUNT	\$50,000.00	
TOTAL AMOUNT DUE		\$50,000.00	

California Environmental Protection Agency



Retain above portion for your records

Please return bottom portion with your payment

BROOKFIELD HOMES SOUTHLAND
3090 BRISTOL STREET, SUITE 200
COSTA MESA, CA 92626
ATTN: BRIAN GEIS

Make your check payable to:

State Water Resources Control Board

Milestone ID	Description	Amount	Due Date
54716	LIABDUE	\$50,000.00	
TOTAL AMOUNT DUE		\$50,000.00	

Mail payment to:

SWRCB ACCOUNTING
ATTN: ENFORCEMENT
P. O. Box 100
SACRAMENTO, CA 95812-0100

Amount Enclosed: \$ _____

PLEASE PRINT THE FOLLOWING INVOICE NUMBER ON YOUR CHECK:

44721

Invoice Date: 02/18/2004
Enforcement Action ID: 83146
Enforcement Order No.: R8-2004-0022